

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

IN THE MATTER OF THE ESTATE OF M. STANLEY GINN, DECEASED,
NANCY ALMOND, PERSONAL REPRESENTATIVE (ADMINISTRATOR
DE BONIS NON) AND INDIVIDUALLY,

Appellant

v.

CARRIE ALMOND, ET AL.

Respondents

DOCKET NUMBER WD76552

DATE: April 15, 2014

Appeal From:

Circuit Court of Chariton County, MO
The Honorable Andrea Ravens Vandeloecht, Judge

Appellate Judges:

Division Four
James Edward Welsh, C.J., Joseph M. Ellis, J., and Mary R. Russell, Sp. J.

Attorneys:

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**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**IN THE MATTER OF THE ESTATE OF M. STANLEY GINN, DECEASED, NANCY
ALMOND, PERSONAL REPRESENTATIVE (ADMINISTRATOR DE BONIS NON)
AND INDIVIDUALLY, Appellant, v. CARRIE ALMOND, ET AL., Respondents**

WD76552

Chariton County

Before Division Four Judges: Welsh, C.J., Ellis, J., and Russell, Sp. J.

Nancy Almond, the sole residuary beneficiary of M. Stanley Ginn's estate, filed a petition for construction of Ginn's will. In Counts II and III, Almond sought application of the doctrine of equitable apportionment as to where the burden of paying the estate taxes lies. The doctrine of equitable apportionment imposes the burden of paying estate taxes on the property that generates the tax and exonerates the property that does not. *Estate of Boder*, 850 S.W.2d 76, 79 (Mo. banc 1993). If equitable apportionment applied, the beneficiaries of the specific devises under the will would be responsible for the estate taxes attributable to the property devised to them. However, equitable apportionment is applicable *only* if the court cannot determine the testator's intent from the testamentary instruments. *Id.* The Respondents sought summary judgment on the counts related to equitable apportionment. The circuit court granted the Respondents' summary judgment motion, finding that the testator's intent, as clearly expressed in the will, was for the estate taxes to be paid by the residuary estate and not by the beneficiaries of the specific devises. Almond appeals the circuit court's grant of summary judgment.

Affirmed.

Division Four holds:

Based on the plain meaning and placement of the language in the will providing for the payment of "all expenses and taxes of [the] estate," and giving due consideration to the testator's overarching testamentary plan, it is clear that the testator intended for the ultimate burden of the estate taxes to be borne by the residuary estate and not by the beneficiaries of the specific devises. The testator's clearly conveyed intent must be given effect. The circuit court did not err in granting summary judgment in favor of the Respondents on Almond's Counts II and III because the doctrine of equitable apportionment does not apply.

Opinion by James Edward Welsh, Chief Judge

April 15, 2014

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